

# **Occupational Licensing Board Antitrust Damages Relief Act:**

## **Section-by-Section**

Since the *North Carolina* decision, there have been dozens of lawsuits across the country seeking treble damages against individual board members through the patchwork of state laws under which the boards operate. This, in turn, this could cause a chilling effect that would lead state boards struggling to find qualified members willing to take on such significant liability as well as the significant costs of defending lawsuits even if the courts ultimately find in their favor. This bill seeks to remedy these concerns by creating a framework states could utilize to ensure that occupational licensing boards are responsive to the state, the professionals that they govern, and the public, and enabling members to be free of concern of individual liability for actions taken by these boards.

### **Sec. 1 Short Title**

The Occupational Licensing Board Antitrust Damages Relief Act of 2020.

### **Sec. 2. Immunity from Liability for Damages**

This section provides immunity to licensing boards and members from liability under section 4 of the Clayton Act (15 U.S.C. 15) if the board comports with the mandates set forth under Sec. 3 of the bill. There is no retroactive application of immunity.

### **Sec. 3 State Board Oversight Provisions Required for Immunity Under This Act**

This section sets forth the standards under which state occupational licensing boards must operate to qualify for immunity. Specifically, it requires that:

- The state has a law(s) requiring a license to practice in the occupation regulated by the governing board, specifies the qualifications to obtain the license, requires that the license be subject to practical and ethical standards;
- All members of the board be appointed by the assigned chief executive officer, legislature, or other elected official;
- The board includes public representation;
- The board provides mechanisms for aggrieved persons to contest actions taken by the board, including holding hearings at which evidence and argument may be presented, the opportunity for the aggrieved party to review countervailing evidence, a final decision by the board in writing, and the opportunity to appeal the adverse decision to an independent adjudicator, including the courts.

### **Sec. 4. Definitions**

This section defines: occupational license as a non-transferable state authorized license; occupational licensing board as established by state law to regulate the qualifications for person to engage in an occupation; person as that established by the Clayton Act, and; state as the several states, territories, or the District of Columbia.

